

C. S. Harlow



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sterling Machine Company, Inc.

File: B-236585

Date: October 31, 1989

DIGEST

Award of contract on the basis of initial proposals to other than the nominal low offeror is proper where nominal low offeror was not eligible for first article waiver and proposed an unacceptable delivery schedule, the requirement was urgent, and the solicitation specifically advised that the delivery schedule could be the basis for the award decision.

DECISION

Sterling Machine Company, Inc., protests the Air Force's award of a contract for straight pins for F110 aircraft engines to Aerospace Technologies under request for proposals (RFP) No. F34601-89-R-62228, issued by the Air Logistics Center, Tinker Air Force Base, Oklahoma as a total small business set-aside. The contract was awarded based on initial proposals. The protester contends that because its offer was low, it was entitled to the award. We deny the protest.

The schedule of the RFP required all offerors to complete "Bid/Proposal A," by submitting a price with a first article, and to complete "Bid/Proposal B," by submitting a price without first article. The agency reserved the right to choose between "Bid/Proposal A" and "Bid/Proposal B," depending on which one would be the most advantageous to the government. Award was essentially to be made to the low, technically acceptable offeror. The RFP also stated that award might be made on the basis of initial offers without discussions. The RFP advised offerors that first article testing would be required unless a waiver was granted, and set forth the conditions for such waiver. To apply for the waiver, offerors were required to furnish with their offers

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specific information regarding previous contracts for this item.

The RFP also set out the government's required delivery schedule, with delivery dates reflecting the first article requirement and separate, shorter delivery dates for various quantities of production articles where the first article requirement had been waived. The solicitation also permitted offerors to propose an alternate schedule for each of these deliveries. However, it cautioned offerors that:

"should the offeror's proposed delivery schedule not meet the [r]equired [d]elivery [s]chedule, and should the [g]overnment determine such proposed delivery schedule to be unacceptable, the [g]overnment reserves the right to make an award to an offeror submitting other than lowest offer as to price, if such action will provide an acceptable delivery schedule and is determined to be in the best interests of the [g]overnment."

Ten offers were received. Sterling submitted the low offer with a unit price of \$7.94 for the item, with or without first article testing. Sterling complied with the required delivery dates in the section reflecting the first article requirement, but in the section without a first article requirement, which required a delivery date of September 1989, Sterling listed "89 Oct." Sterling did not submit any information regarding previous contracts, nor did it indicate in its offer in any way that it was seeking a waiver of first article, or that it had successfully produced the straight pins under other government contracts. Because it had not included any of the information required to apply for a waiver of first article testing, Sterling's offer was evaluated as not qualifying for the waiver. The next low offer also required first article testing. Aerospace Technologies submitted the third low offer, with a unit price of \$9.07, with the first article waived. Aerospace also proposed a delivery schedule that was more advantageous to the government than the required schedule.

Award was made to Aerospace on the basis of initial proposals. Sterling filed a protest to the Air Force against the award. The agency denied the protest, and this protest to our Office followed.

Sterling contends that it was, in fact, qualified to receive a waiver of the first article requirement because it has produced the pin under other government contracts and is an approved source to manufacture the part for General Electric Company. The protester also argues that it intended to meet

the agency's required schedule for delivery without first article testing, and that the insertion of "Oct" instead of "Sept" in its delivery schedule was an error. Because its price was low, Sterling contends that it should have been contacted about these discrepancies and should have received the contract.

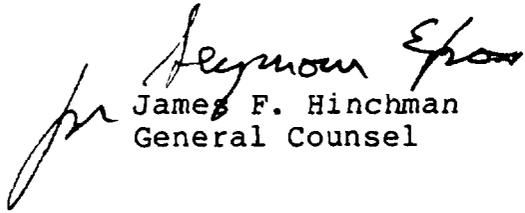
The Air Force states that during proposal evaluation, it became apparent that its requirement for this item was extremely urgent, and that an immediate selection needed to be made on the basis of the delivery schedule most advantageous to the government.

As a general rule, a contracting agency may make an award on the basis of initial proposals, without holding discussions, where the solicitation, as here, advises offerors of this possibility, and the competition or prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. See Phone-A-Gram-System, Inc., B-228546; B-228546.2, Feb. 17, 1988, 88-1 CPD ¶ 159.

Since the Air Force had in the solicitation reserved the right to choose between Bid/Proposals "A" and "B," we find that it was proper for the agency to determine on the basis of the urgency of its needs to consider only bid/proposals "B," without first article. See Lunn Industries, Inc., B-210747, Oct. 25, 1983, 83-2 CPD ¶ 491. Since Sterling did not request and had not submitted any documentation whatsoever to support a request for first article waiver, the Air Force, in our view, reasonably concluded that Aerospace's proposal "B" was the lowest priced, technically acceptable proposal offering the delivery terms required by the agency. We note that Sterling's proposed delivery schedule for Bid/Proposals "B" was unacceptable to the agency, even if first article had been waived for the firm, and there was nothing in Sterling's proposal that suggested that the firm had made a mistake in its schedule. In this regard, the RFP specifically advised offerors that the contract would not be awarded to the nominally lowest priced offeror if that offeror submitted an unacceptable delivery schedule and where acceptance of a proposal of another offeror meeting the government's delivery requirement was found to be in the government's best interest. Moreover, there was no indication in the protester's offer that it

could improve its delivery terms competition was obtained,
we have no basis to object to the award to Aerospace on the
basis of initial proposals.

The protest is denied.

for Seymour Egan
James F. Hinchman
General Counsel